

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF NEBRASKA**

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PRISM TECHNOLOGIES LLC,

Plaintiff,

v.

SPRINT SPECTRUM L.P. D/B/A SPRINT PCS

Defendant.

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Civil Action No. 8:12-cv-123-LES-TDT

**PRISM TECHNOLOGIES LLC’S MOTION FOR  
AN ACCOUNTING AND ONGOING ROYALTIES**

Pursuant to Nebraska Civil Rule 54.3, Fed. R. Civ. P. 59(e), 35 U.S.C. 283 and 35 U.S.C. § 284, plaintiff Prism Technologies LLC (“Prism”), by and through its counsel, hereby respectfully moves the Court to amend its June 24, 2015 judgment following the jury verdict (ECF No. 463) to: (i) require Sprint Spectrum L.P. d/b/a Sprint PCS (“Sprint”) to provide within two weeks of the Court’s order updated financial information for January 1, 2015 through June 24, 2015; (ii) award Prism an accounting for infringement from January 1, 2015 through June 24, 2015; and (iii) award Prism ongoing royalties at an enhanced rate based *inter alia* on Sprint’s ongoing willful infringement.

1. A jury trial in this matter was held on June 15, 2015 through June 23, 2015.
2. During trial Prism alleged that Sprint infringed Claims 1 and 33 of U.S. Patent No. 8,127,345 and Claims 7 and 37 of U.S. Patent No. 8,387,155 (together, the “Asserted Patents” and the “Asserted Claims”).
3. On June 23, 2015, the jury returned a verdict finding that Sprint infringed the Asserted Claims and awarded Prism damages in the amount of \$30,000,000. (ECF No. 467), rendering Prism the prevailing party.

4. On June 24, 2015, the Court entered judgment in favor of Prism and against Sprint in the amount of \$30,000,000, together with Prism's costs. (ECF No. 463).

5. At trial, Prism presented damages evidence relating to the cost savings Sprint enjoys by virtue of its infringing use of the Asserted Patents. This data, however, only reflected Sprint's cost savings through December 31, 2014. Sprint did not provide updated financial information through the time of trial and, as a result, these cost savings were not included in the jury verdict. During deliberations, the jury confirmed that its damages award was limited to past damages.

6. Pursuant to 35 U.S.C. § 284, a party prevailing on a claim of patent infringement is entitled to damages in an amount "no . . . less than a reasonable royalty for the use made of the invention by the infringer." These damages must compensate the prevailing party for the entire period of infringement.

7. As a result, Prism is entitled to an accounting to determine the reasonable royalty due to Prism for Sprint's infringement after the period for which Sprint provided discovery through the entry of judgment (i.e., January 1, 2015 through June 24, 2015).

8. In addition, pursuant to 35 U.S.C. § 283, an award of ongoing royalties is an appropriate remedy in lieu of a permanent injunction to compensate a prevailing party for future infringement by an adjudicated infringer.

9. Here, notwithstanding the jury's verdict of infringement, Sprint openly continues its infringing conduct. As such, Prism is entitled to damages in the form of an ongoing royalty for Sprint's post-verdict infringement through the life of the Asserted Patents (i.e., June 11, 2017).

10. This Motion is based upon Prism's Brief in Support of its Motion for an Accounting and Ongoing Royalties, Index of Evidence, and the Declaration of Marcus A. Colucci, which have been filed contemporaneously herewith, as well as all pleadings, records and files herein which this Court may properly take judicial notice, and upon such other and further evidence and argument as the Court may receive prior to its decision.

WHEREFORE Prism moves the Court to amend its June 24, 2015 judgment to: (i) require Sprint to provide within two weeks of the Court's order updated financial information; (ii) award Prism an accounting for infringement from January 1, 2015 through June 24, 2015; and (iii) award Prism ongoing royalties at an enhanced rate based *inter alia* on Sprint's ongoing willful infringement.

Dated: July 22, 2015

Respectfully submitted,

**Koley Jessen P.C., L.L.O.**

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**CERTIFICATE OF SERVICE**

I hereby certify that counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system on this 22nd day of July 2015.

s/ Marcus A Colucci  
Marcus A. Colucci